

Cited case.

(3)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.855/88.

Date of Judgment 24.12.1991.

K.Subba Rao

.. Applicant

Vs.

1. Union of India,
represented by its
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi-110011.
3. Chief Engineer,
Southern Command,
Army Headquarters,
Pune (Maharashtra).
4. Chief Engineer,
Dry Dock & Visakhapatnam Zone,
9, ISRD Area,
Kancharlapalem P.O.,
Visakhapatnam-530008. .. Respondents

Counsel for the Applicant : Shri V.Jogayya Sarma

Counsel for the Respondents : Shri N.R.Devaraj, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

I Judgment as per Hon'ble Shri R.Balasubramanian : Member(A) I.

This application filed by Shri K.Subba Rao under section 9 of the Administrative Tribunals Act, 1985 against the Union of India, represented by its Secretary, Ministry of Defence, South Block, New Delhi and 3 others, seeks a direction to the respondents to appoint the applicant as Superintendent E/M Grade-I in the Military Engineering Services w.e.f. the date of promotion of his immediate junior with all consequential benefits.

2. The applicant appeared for a test for selection to the post of Superintendent E/M Grade-I on 13.7.83. vide the Department's letter dated 12.12.83, he was informed of

we have to dismiss the application and accordingly do so without any order as to costs. We, however, wish to make it clear that since the respondents are already considering the required relaxation, this dismissal of the case by us on the ground of limitation should not come in the way of the respondents promoting the applicant after a decision on age relaxation is taken by them.

CERTIFIED TO BE TRUE COPY

Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

Copy to:-

1. Secretary, Ministry of Defence, Union of India, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, New Delhi- 110011.
3. Chief Engineer, Southern Commandant, Army Headquarters, Pune (Maharashtra).
4. Chief Engineer, Dry Dock & Visakhapatnam Zone, 9, ISRD Area, Kancharlapalem P.O., Visakhapatnam-530008.
5. One copy to Shri. V.Jogayya Sarma, H.No.5-1-896/6, Putlibowli, Hyderabad-500195.
6. One copy to Shri. N.R.Devraj, Addl.CGSC CAT, Hyd.
7. One spare copy.

Rsm/-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.264/89.

Date of Judgement : 12.7.93.

P.Gopalakrishnam Raju :: Applicant

Vs.

1. Union of India, Rep. by its
Secretary, Min. of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House, New Delhi.
3. Chief Engineer,
Southern Command,
Army Headquarters,
Pune (Maharashtra).
4. Chief Engineer, Dry Dock
Visakhapatnam Zone,
9, IRSD Area,
Kancherlapalem P.O.,
Visakhapatnam. :: Respondents

Counsel for the Applicant :: Shri V.Jogayya Sarma

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

C O R A M:

Hon'ble Shri A.B.Gorthi : Member (A)

Hon'ble Shri T.Chandrasekhar Reddy : Member (J)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member (A) X

The applicant who was selected for promotion to the post of Superintendent, E/M, Grade I but was not given the said promotion on the ground that he became ineligible due to being overaged prays in this application for a direction to the respondents to appoint him as Supdt., E/M, Gr.I w.e.f. the date on which a candidate below his name is appointed, with all consequential benefits.

(32)

2. The applicant whose date of birth is 18.6.1947 joined Military Engineering Services (M.E.S. for short) on 4.10.1972 as Supdt., E/M, Gr.II. His qualification at that time was Diploma in Electrical Engineering. Subsequently, in May, 1979 he acquired a degree in Electrical Engineering. He having thus become eligible for promotion to the post of Supdt., E/M, Gr.I as a departmental candidate forwarded his application to the concerned authorities. He was called for an interview and was actually interviewed on 13.7.1983. Thereafter, vide memo dt. 12.12.1983 he was informed that he was provisionally selected for promotion to the post of Supdt., E/M, Gr.I. However, the authorities concerned, on the ground that he had crossed the age of 35 years at the time of ~~appointment~~^{selection}, have not passed any orders regarding his promotion. The applicant pursued the matter with the authorities and the authorities vide memo dt. 28.5.1987 informed him that a vacancy would be reserved in his case. Subsequently, Govt. of India, Dept. of Personnel & Training communicated vide memo dt. 20.5.1988 relaxing the age limit in respect of departmental candidates and specifying 40 years as the age limit.

3. The contention of the applicant is that as the age limit has been extended to 40 years vide Govt. of India memo dt. 20.5.1988 and as he was below the age of 40 years on the date of his interview, i.e., 13.7.1983, he was entitled to be given promotion to the post of Supdt., E/M, Gr.I.

4. The respondents refuted the contention of the applicant and have stated that the applicant was permitted

to appear for the interview/test subject to the condition that his final selection is approved by the Engineer-in-Chief, Min. of Defence. As the applicant was found suitable, he was informed that he was provisionally selected but his actual appointment would follow only if the competent authority relaxed the age limit in respect of the applicant. In accordance with the Engineer-in-Chief's letter dt. 9.8.1983 the crucial date for determining the age shall be the date of assumption of duties. This position was revised with the publication of the Recruitment Rules of 1983. According to the said Recruitment Rules, the crucial date for determining the age limit shall be the closing date for receipt of applications from the candidates in India. In short, the respondents' contention is that as the applicant was above 35 years even on the date of his interview/selection he was not eligible for promotion to the post of Supdt., E/M, Gr.I. They also contend that the Govt. of India letter dt. 20.5.1988 enhancing the age limit to 40 years would have only prospective application and cannot apply to past cases such as the one of the applicant.

5. We have heard the learned counsel for both the parties. The learned counsel for the applicant firstly contended that the respondents should not have called the applicant for the interview if they had considered that he was ineligible for promotion. Having called the applicant for the interview, having selected him and having kept a vacancy reserved for him, they are not justified in

rejecting the claim of the applicant for promotion on the ground that he was overaged on the date of interview. Secondly, he contended that as the age limit was enhanced by the Govt. of India vide memo dt. 20.5.1988 the benefit of the same should be available to the applicant, as the applicant's case was under active consideration with the respondents for a fairly long time.

6. Shri N.R.Devaraj, learned counsel for the respondents at the very outset objected to the maintainability of this application on the ground of delay and laches and has drawn our attention to a judgement of this Tribunal in O.A. No.855/88. In its judgement dt. 24.12.91 in the said O.A. this Tribunal held that as the cause of action viz: the selection for the post of Supdt., E/M, Gr.I, arose in 1983 and as the applicant therein chose to make the first ever representation in 1988 the application was squarely hit by limitation as laid down in section 21 of the Administrative Tribunals Act, 1985. In the instant case, however, we find that the applicant seems to have been pursuing his case because vide memo dt. 28.5.1987 the Chief Engineer, Headquarters Southern Command informed the Chief Engineer, Dry Dock & Visakhapatnam Zone that a vacancy may be reserved for the applicant and he may be considered for appointment after obtaining the necessary age relaxation. In view of this, we are not inclined to dismiss this application on the technical plea of limitation.

7. On the merits of the case, admittedly the specified age limit for a departmental candidate for promotion to the post of Supdt., E/M Gr.I is 35 years. The applicant's date of birth being 18.6.1947 he was above the age of 35 years on the date of interview itself. As per the Engineer-in-Chief's letter dt. 9.8.1983 the crucial date for determining the age shall be the date of assumption of duties. With the introduction of the revised Recruitment Rules in November, 1983 the crucial date for determining the age limit was the closing date for receipt of applications from candidates in India. From any point of view, it is apparent that the applicant was not within the age limit when he was selected for appointment as Supdt., E/M, Gr.I. The contention of the applicant's counsel that as the age limit was enhanced to 40 years vide Govt. of India memo dt. 20.5.1988, the benefit of the same should be applicable to the applicant also is not very convincing. A careful perusal of this memo would make it abundantly clear that ~~it is~~ ^{has} only prospective application and does not cover past cases. On the date of issue of the Govt. of India Office Memorandum i.e., on 20.5.1988, the applicant was above 40 years. He could not, therefore, be given the benefit of the said memo under which the age limit has been enhanced to 40 years. Under these circumstances, the applicant's prayer for promotion from the date on which he was selected in 1983 cannot be acceded to. It is open to the respondents to give him promotion in case there is any age relaxation or revision of age limit in the meantime in respect of such promotions.

(AC)

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8. The application is dismissed with no order as to costs.

T.C.R.
(T.Chandrasekhar Reddy)
Member(J).

A.B.Gorthi
(A.B.Gorthi)
Member(A).

Dated: 12 July, 1993.

(Dictated in Open Court).

br.

~~8/7/93~~
Dy. Registrar(Judl.)

Copy to:-

1. Secretary, Ministry of Defence, Union of India, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, New Delhi.
3. Chief Engineer, Southern Command, Army Headquarters, Pune(Maharashtra).
4. Chief Engineer, Dry Dock Visakhapatnam Zone, 9, IRSD Area, Kancherlapalem, P.O., Visakhapatnam.
5. One copy to Sri. V.Togayya Sarma, advocate, 5-1-896/6, Putlibowli, Hyd-195.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One spare copy.
8. one copy to Library.

Rsm/-

6th of July
page 16
7/7/93

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0-A-264/89
COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN
AND

THE HON'BLE MR. A. B. GORTY : MEMBER(AD)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)
AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 12/7/1993

ORDER/JUDGMENT: ✓

M.A. / R.A. / C.A. NO.

O.A. No. 264/89

T.A. No. (w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with *Central Administrative Tribunal*

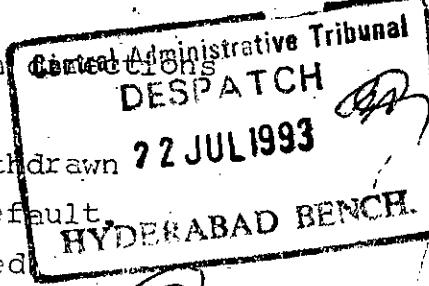
Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/ Ordered

No order as to costs.



pvm

16.7.93
No record of
has been on order sheet.